

October 26, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of an Intergovernmental Agreement with Oregon Health Authority for the “Oregon Tobacco Quit Line” electronic referral system. Agreement value is \$6,000 for 12 months. Funding is through Health Share of Oregon. No County General Funds are involved.

Previous Board Action/Review	01/06/2022_Previously approved by BCC, contract #10454 (2022.01.06 III.D.2) 01/24/2023-Briefed at Issues – 10/24/2023-Briefed at issues		
Performance Clackamas	1. Improved Community Safety and Health		
Counsel Review	Yes	Procurement Review	No
Contact Person	Philip Mason-Joyner	Contact Phone	503-742-5956

EXECUTIVE SUMMARY: The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of the biennial Revenue Intergovernmental Agreement with Oregon Health Authority (OHA) for the financing of Public Health Services. This Agreement provides funding for FY -2023.

The County desires to continue contracting with the Oregon Health Authority to coordinate the connection of regional partners to the Oregon Tobacco Quit Line. The E-referral process will continue to support bi-directional data exchange between the Oregon Tobacco Quit Line and referring healthcare professionals at the health center.

This contract has been with the Oregon Health Authority since February 15, 2023, and has been delayed due to staffing issues within their agency.

The total contract value is \$6,000 for the 12 months of January 1, 2023, through December 31, 2023.

RECOMMENDATION: Staff recommends the Board of County Commissioners approve the attached Expense contract #10890.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook
 Director of Health, Housing, and Human Services

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND OREGON HEALTH AUTHORITY**

Agreement #10890

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Oregon Health Authority ("The Agency"), an agency of the State of Oregon, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The County desires to contract with the Agency to coordinate the connection of regional partners to the Oregon Tobacco Quit Line.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective **January 1, 2023**, regardless of when signed, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or **December 31, 2023**, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay the Agency, from available and authorized funds, a sum not to exceed six thousand dollars (**\$6,000.**) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit invoices for Work performed at the beginning of each electronic referral project, and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to the Agency following the County's review and approval of invoices submitted by the Agency. The Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties**
 - A. *Agency Representations and Warranties:* The Agency represents and warrants to County that the Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to the Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all

costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, the Agency shall provide documentation to the County of the Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Katie Knutsen or their designee will act as liaison for the County.

Contact Information:

971-346-0292 – kknutsen@clackamas.us

- Vidal Ophelia Starr or their designee will act as liaison for the Agency.

Contact Information:

971-346-6419 - Ophelia.S.Vidal@dhsosha.state.or.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and the Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of

Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County's liaison.
- F. **Hazard Communication.** The Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by

Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, the Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** The Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- M. **Subcontract and Assignment.** The Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve the Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** The Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither the Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** The Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by the Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that the Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Oregon Health Authority

Chair, Board of County Commissioners



Stephen White, Manager, Health Systems
& Community-Clinical Linkages

Date

Date

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Exhibit A
SCOPE OF WORK

I. OHA is responsible for:

1. Coordinating activities with Optum (the Oregon Tobacco Quit Line operator) to ensure completion of the electronic referral system at the level of the Oregon Tobacco Quit Line.
 - a. E-referral process will support bi-directional data exchange between the Oregon Tobacco Quit Line and referring health care professionals at the health centers.
 - b. System will allow electronic sending of referrals to the Quit Line and any outcomes of referrals back to the sending clinic.
2. Coordinating with Optum to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
 - a. OHA will oversee implementation with Optum until OHA and CCHPD are satisfied with incoming and outgoing data.
 - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.
3. Ensuring Optum uses industry- approved, HIPAA-compliant methods for exchanging protected health information.
 - a. Includes ensuring Optum adheres to the electronic referral guidance recommended by the North American Quitline Consortium.
4. Confirming with Optum that the Quit Line received an actual referral (rather than a test referral).
5. Ensuring continued operation and maintenance of the electronic referral connection at the level of the Oregon Tobacco Quit Line, including annual fees from Optum.

II. CCPHD is responsible for:

1. Coordinating with health centers and electronic medical record (EMR) vendor (OCHIN Epic) to ensure completion of the electronic referral system at the level of the clinic serviced by OCHIN.
2. Coordinating with clinics and OCHIN to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
 - a. CCPHD will oversee implementation with clinics and OCHIN until OHA and CCHPD are satisfied with incoming and outgoing data.
 - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.
3. Ensuring clinics and OCHIN use industry- approved, HIPAA-compliant methods for exchanging protected health information.
4. Confirming with clinics that the referring healthcare professional received the associated, complete outcome report.
5. Maintaining ongoing referrals from clinics, including the connection serviced by OCHIN and associated fees.